

February 1, 2023

House Political Subdivisions Committee  
c/o Representative Donald W. Longmuir, Chair  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

**Re: House Bill 1462 – Opposition**

Dear Chairman Longmuir and Members of the House Political Subdivisions Committee:

Thank you for the opportunity to submit this testimony in opposition to House Bill 1462.

My name is Clifford Issendorf. I am a lifelong farmer in Bottineau County, a landowner, and currently the Bottineau County Water Resource Board Chair I have served on the Bottineau County Water Resource District Board for over 40 years.

House Bill 1462 adds new, costly requirements for water resource boards. Century Code chapters 61-21 and 61-16.1 require water resource boards to issue orders that may affect multitudes of people. In the case of an assessment project, for example, hundreds of landowners may be affected by the proposed project. The Bottineau County Water Resource Board believes it is important that landowners be notified of projects that affect them and that they be given an opportunity to participate in support or opposition. In fact, these projects already require the water resource board to mail notice of the proposed project to all affected parties along with information about the project and contact information on where more information can be found. The water resource board must also hold a public hearing at which affected parties can provide input and voice opinions publicly, and provide an opportunity for affected parties to vote whether to approve or dismiss a project. If more than fifty percent of the votes filed are in favor, the water resource board must adopt an order establishing the project. Otherwise, the water resource board must adopt an order dismissing the project.

Under current law, the water resource board must wait 30 days from the date of adopting an order establishing a project before it can proceed with an assessment hearing, bidding the project for construction, or negotiating with banks on temporary improvement warrants and bond financing. This allows affected landowners, who have already been notified of the project and given an opportunity to participate in the proceedings, 30 days to appeal the order to district court.

House Bill 1462 changes the existing law so that the 30-day appeals period only starts after “affected parties” have been “served” with the order. In the case of assessment projects, this could mean paying for a process server or a local sheriff to serve hundreds of affected landowners. This adds thousands of dollars to the project costs. Often times, some of the affected landowners live out-of-state, requiring the water resource board to hire a process server or local sheriff on the other side of the country. The water

resource board would need to wait until all affected landowners are served before the 30-day appeals period would begin. This could be costly and cause significant delays. The Bottineau County Water Resource Board is opposed to occupying the resources of local sheriffs' offices for this purpose.

We are also concerned about Section 2 of the bill and its awarding of attorneys' fees when there are three or more appellants in an appeal where the court rules in favor of appellants. Under House Bill 1462, must the court rule in favor of appellants on all issues? Would attorneys' fees be awarded if the court ruled in favor of the water resource board on a majority of issues? These questions are not addressed by the current bill.

The default rule in the United States is known as the "American Rule" – that each party is responsible for paying for its own attorney's fees. Exceptions are typically reserved for situations where a party's position or processing of the appeal has been deemed unreasonable or done in bad faith.

House Bill 1462 uses the number of appellants, rather than the actions of the parties, as the threshold for awarding attorneys' fees. The bill also applies only to water resource boards. An unreasonable appeal or appeal taken in bad faith can cause unnecessary delays and increase projects costs which are often passed on to taxpayers. If an award of attorneys' fees is to be included with this bill, we urge the Committee to amend the bill so that attorneys' fees are only awarded in cases where one party has acted unreasonably or in bad faith, as determined by the court. Also, the award of attorneys' fees in such situations should be equally available to appellants and local governments.

I submit this written testimony to make record that the Bottineau County Water Resource Board is opposed to House Bill 1462. We urge the Committee to vote "Do Not Pass" on this bill.

Sincerely,

Clifford Issendorf  
Board of Managers Chair,  
Bottineau County Water Resource District